

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT ROGERS,

Defendant-Appellant.

UNPUBLISHED

October 16, 1998

No. 203163

Kent Circuit Court

LC No. 95-003661 FC

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

A jury convicted defendant of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). The trial court sentenced defendant to ten to twenty-five years' imprisonment, reflecting his status as a fourth felony offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Defendant failed to preserve his claim of prosecutor misconduct by timely objection below on the ground now asserted on appeal. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Therefore, we review defendant's claim only if a curative instruction could not have eliminated the prejudicial effect or if the failure to review the issue would result in a miscarriage of justice. *Id.*

No miscarriage of justice exists in this case. Assuming without deciding that the prosecutor erred in eliciting the challenged rebuttal testimony, defendant cannot establish prejudice. The challenged testimony responded to defense counsel's comment during opening statement that the complainant was a prostitute. Evidence that the complainant might be a prostitute was inadmissible to show her general bad character or her character for truthfulness. *People v Chaplin*, 412 Mich 219, 224-226; 313 NW2d 899 (1981). The challenged testimony merely removed any taint on the character of the complainant caused by defense counsel's comment during opening statement.

Affirmed.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks